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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/807,603	04/16/2001	Satoru Todo	067242/0148	2083
22428	7590	07/29/2005	EXAMINER	
FOLEY AND LARDNER SUITE 500 3000 K STREET NW WASHINGTON, DC 20007			KWON, BRIAN YONG S	
			ART UNIT	PAPER NUMBER
			1614	

DATE MAILED: 07/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/807,603

Applicant(s)

TODO, SATORU

Examiner

Brian S. Kwon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 48, 101, 104, 106, 107, 109 and 111-113 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 48, 101, 104, 106, 107, 109 and 111-113 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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## DETAILED ACTION

### *Response to Arguments*

1. Applicant's arguments with respect to claims 48, 101, 104, 106-107, 109 and 111-113 have been considered but are moot in view of the new ground(s) of rejection.

### *Claim Rejections - 35 USC §103*

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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2. Claims 48, 101, 104, 106-107, 109 and 111-113 are rejected under 35 U.S.C. 103(a) as obvious over Gemba et al. (US 6214855 B1) in view of Koudst et al. (US 5648331)

Gemba teaches the use of the claimed compounds represented by the formula (I), namely CC1=CC=C(C=C1C2=CC=CC=C2)OCC(=O)O and its sodium salt, as sPLA2 inhibitor for the treatment of stroke (abstract; column 7, lines 43-44; claims).

Koudst is being supplied as a reference to demonstrate the correlation between the stroke and post reperfusion injury at other tissues or organs including heart (column 4, lines 21-40 and column 12, lines 3-13). Koudst states: "many factors and mechanisms contribute to the ultimate tissue damage after a period of partial or total ischemia followed by reperfusion. As in the case of reperfusion after a stroke, myocardial infarction, angioplasty, replantation or free-flap tissue transfer, the period of reperfusion can be complicated by further tissue injury caused by thrombosis...".

The teaching of Gemba differs from the claimed invention in the use of the specific sPLA2 inhibitor represented by the formula (I) for the treatment of ischemia reperfusion injury in other organs including heart, kidney, liver and pancreas. To incorporate such teaching into the teaching of Gemba, would have been obvious in view of Koudst who teaches the art recognized correlation between stroke and post reperfusion injury at other tissues or organs such as heart. One having ordinary skill in the art would have known that reperfusion followed by ischemia can be complicated by further tissue injury in other organs including heart. One having ordinary skill in the art would have motivated to modify teaching of Gemba to extend the usage of said sPLA2

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inhibitors that has been known to be effective in stroke, with reasonable expectation of success, to treat ischemia reperfusion injury in heart.

With respect to "ischemia reperfusion injury occurs in the liver", the examiner determines that such variation is obvious tasks for the skilled artisan, in absent evidence to the contrary.

### Conclusion

3. No Claim is allowed.
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Kwon whose telephone number is (571) 272-0581. The examiner can normally be reached Tuesday through Friday from 9:00 am to 7:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low, can be reached on (571) 272-0951. The fax number for this Group is (703) 872-9306.

Any inquiry of a general nature of relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

Brian Kwon  
Patent Examiner  
AU 1614

A handwritten signature in dark ink, appearing to be 'BK', followed by a long horizontal line extending to the right.